

**CITY OF ELEPHANT BUTTE
ORDINANCE NO. 173**

AN ORDINANCE DEFINING AND PROHIBITING NUISANCES

WHEREAS, the City of Elephant Butte, New Mexico (“City”) has authority to define and abate nuisances and impose penalties upon a person who creates or allows nuisances to exist (*see* NMSA 1978, §§ 3-18-5 and 3-18-17);

WHEREAS, the City currently has multiple, competing or surplus provisions within its Code relating to nuisances; and

WHEREAS, the health, safety, welfare and order of the City will be best served by removing the existing nuisance provisions from the City Code and adopting a single, clear nuisance ordinance.

NOW THEREFORE, BE IT ORDAINED by the Governing Body of the City of Elephant Butte as follows:

1. Title

This ordinance shall be known as the “Elephant Butte Nuisance Abatement Ordinance.”

2. Purpose

The purpose of this ordinance is to help ensure that the City of Elephant Butte remains clean, orderly, and attractive for the benefit of its residents and visitors through the prohibition and abatement of littering, disturbing noise, and public nuisances.

3. Definitions.

- a. “Antique vehicle” means a passenger car or truck which is at least 35 years old and is being preserved or restored for historical purposes or other such special-interest purposes.
- b. “Garbage” means all putrescible food or other organic wastes and other such worthless or offensive matter commonly generated by households and businesses, the accumulation of which may create a nuisance or be deleterious to public health or offensive to the senses; also referred to as “trash.”
- c. “Hazardous waste” means any solid, liquid, semisolid or gaseous material which may pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed.
- d. “Inoperable motor vehicle” means a motor vehicle which, by reasons of dismantling, disrepair, accident or other cause, is incapable of being propelled under its own power.
- e. “Junk trailer” means a trailer that has been continuously inoperable for at least one hundred twenty (120) days, or which has been wrecked, or which has been fully or partially dismantled for ten (10) days or more.

- f. "Junk vehicle" means a motor vehicle other than an antique or special interest vehicle that has been continuously inoperable for at least one hundred twenty (120) days, or which has been wrecked, or which has been fully or partially dismantled for ten (10) days or more.
- g. "Junk vessel" means a vessel that has been continuously inoperable for at least one hundred twenty (120) days, or which has been wrecked, or which has been fully or partially dismantled for ten (10) days or more.
- h. "Littering" means throwing, dropping or discarding any solid waste in any public or private place within the City except in authorized waste receptacles.
- i. "Motor vehicle" means every vehicle that is self-propelled and every vehicle that is propelled by electric power obtained from batteries. This includes but is not limited to cars, trucks, vans, tractors, motorhomes, recreational vehicles, all-terrain vehicles, golf carts, motorcycles and mopeds.
- j. "Outdoor storage" means the storage of any materials subject to the provisions of this ordinance in a setting that is not entirely within an enclosed structure.
- k. "Person" means a human being or business entity.
- l. "Property" means any real property within the City. When a portion of privately owned property abuts on a public right-of-way or easement, the responsibility of the person in control for purposes of this ordinance shall extend to the center of the public alley or easement or back of street curb line, or edge of payment, or at the edge of dirt roads; however, this shall not restrict in any manner the maintenance of the right of way or easement by the City.
- m. "Refuse" means non-putrescible solid waste such as cold ashes, wastepaper, rags, wooden, cardboard or paper boxes, bottles, broken ware, tin cans, plastics and similar residential and commercial waste materials; also referred to as "trash."
- n. "Rubbish" means waste or rejected material; anything worthless or valueless in its present form; garbage; trash.
- o. "Solid waste" means garbage, refuse, rubbish, trash or yard waste.
- p. "Special interest/historic vehicle" means a motor vehicle of any age which, because of its significance, is being collected, preserved, restored or maintained by a person as a leisure pursuit.
- q. "Trailer" means all a nonautomotive vehicle designed to be hauled by road and includes, but is not limited to, campers, concessions trailers, dry vans, flatbed trailers, horse trailers, livestock trailers, lowboys, and non-motorized recreational vehicles.
- r. "Vessel" means watercraft, other than a seaplane, normally used as a means of transportation on water. This includes sailboats, motorboats, paddleboats, and jet skis.
- s. "Weeds" means all plant growth at any stage of maturity which:
 - i. Exceeds 12 inches in height, except healthy shrubs, healthy native vegetation flowers, herbs or produce for human consumption grown in a tended and cultivated garden; unless the vegetation by its density or location, constitutes a detriment to the health, benefit and welfare of the

public and community, or a hazard to traffic, or creates a fire hazard, or otherwise interferes with the removal of weeds;

- ii. Regardless of height, harbors, conceals or invites deposits or accumulation of refuse or trash;
- iii. Gives off unpleasant or noxious odors; and
- iv. Is dead or diseased.

This definition of “weeds” does not include indigenous vegetation which remains in an undisturbed state on undeveloped lots or large parcels of land.

- t. “Yard waste” means yard clippings, grass cuttings, yard cleanings, fallen trees, tree limbs, slash, leaves or pine needles.

4. Littering

- a. Littering is prohibited within the City. This prohibition includes the throwing or discarding of any solid waste or hazardous waste from a vehicle.
- b. Open loads in vehicles. No person shall drive or move any truck or other vehicle with materials of any kind in an open bed unless the vehicle is so constructed, loaded or secured as to prevent its load or contents from being inadvertently discharged from the vehicle.

5. Disturbing Noise

- a. It is unlawful for any person to make, continue, or cause to be made or continued any noise disturbance within the City between the hours of 10:00 p.m. and 6:00 a.m. the following day, as follows:
 - i. By using or permitting the operation of any machine or device for the production of sound in a manner whereby the sound is plainly audible (1) at the property boundary of the source, (2) 50 feet from the device when operated within a vehicle on a public right of way; or (3) through the walls of a building common to two or more occupants, including but not limited to apartments, duplexes, motels, and hotels.
 - ii. By using or permitting the use of any equipment or tools used in construction, repair, alteration, or demolition work on buildings, structures, streets, alleys or appurtenances thereto in residential or commercially zone areas.
 - iii. By using or permitting the use of any power equipment or tools used in grounds maintenance outdoors in any residential or commercially zoned areas.
- b. Exceptions
 - i. Noise of safety signals and warning devices.
 - ii. Noise from any authorized emergency vehicle
 - iii. Noise from emergency work; and
 - iv. Noise from activities of a temporary duration permitted by law for which a special use permit has been obtained.

6. Nuisances Generally

In the interests of the health, safety and welfare of residents and visitors to the City, the following property conditions are declared to be public nuisances, and it shall be unlawful for any owner or occupant of real property to create, allow or maintain any of these conditions.

- a. Unsanitary or hazardous premises, consisting of, but not limited to:
 - i. Solid waste or hazardous waste;
 - ii. Wastewater, stagnant water, sewage or any conglomeration of residue thereof that emits odors or serves as a feeding or breeding place for flies, insects, spiders, rodents or other vermin;
 - iii. Weeds, brush or other wild, uncontrolled growth of vegetation; or
 - iv. Dead animals except for household pets properly buried.
- b. Any building or other structure which is in such a dilapidated condition that it is unfit or structurally dangerous for human habitation, or kept in such an unsanitary condition that it is a menace to the health of people residing in the vicinity thereof, or that presents a more than ordinarily dangerous fire hazard in the vicinity where it is located.
- c. Any condition that is attractive and dangerous to the public, such as a vacant, accessible building; buildings with broken or missing windows or doors; excavations; dilapidated walls or fences; wood piles other than stacked firewood; debris; or other materials or conditions creating a public hazard.
- d. The outdoor storage of salvage materials, junk, abandoned or unused furniture, appliances, sinks, toilets, cabinets, or other household fixtures.
- e. The outdoor storage of junk vehicles, junk vessels, or junk trailers subject to the exceptions specified in Section 7 below.
- f. The outdoor storage of motor vehicle parts, vessel parts, trailer parts, discarded or broken equipment or tools, or used or damaged lumber.
- g. All disagreeable or noxious odors and stenches, as well as the conditions, substances or other causes which give rise to the emission or generation of odors and stenches.
- h. Dense smoke, noxious fumes, gas, soot or cinders in such quantities as to escape the property and unreasonably affect other properties or persons.
- i. Any building, structure or other place or location where any activity in violation of local, state or federal law is conducted, performed or maintained. Examples of unlawful activity include, but are not limited to, prostitution, manufacture, use or distribution of controlled substances, and gambling.
- j. Any visual obstruction of clear-sight triangles as that term is defined in Section 155.05 of the City Code.

7. Exceptions

- a. The prohibition on outdoor storage of certain motor vehicles, vessels, trailers and their parts does not apply to:
 - i. A motor vehicle, vessel, trailer or part thereof which is stored or parked in a lawful manner in accordance with an approved site plan on private property in connection with the business of a licensed motor vehicle, vessel, or trailer dealer or junkyard;
 - ii. An inoperable antique vehicle or special interest/historic vehicle stored by a person on that person's property or by agreement with the property owner, provided that the vehicle and the outdoor storage areas are maintained in such a manner that they do not constitute a health hazard and are screened from ordinary public view and the view from adjoining properties by means of a solid fence, trees, shrubbery, landscaping or combination thereof or other appropriate means; or
 - iii. Any motor vehicle in operable condition specifically adapted or constructed for racing.

8. Enforcement by Enforcing Officer

- a. Enforcing Officer. The Code Enforcement Officer or any law enforcement officer shall enforce the provisions of this ordinance. Enforcement may be facilitated by, but shall not be dependent upon, a complaint by a resident of the City or other person to the Code Enforcement Officer or a law enforcement officer.
 - i. For the purpose of this section, hereinafter the Code Enforcement Officer and any law enforcement officer enforcing this ordinance shall be referenced either collectively or singularly as "enforcing officer."
- b. Notice and Citation.
 - i. When a violation of this ordinance is suspected, a written warning notice may be issued prescribing a period not to exceed thirty (30) days by which to cure or abate the suspected violation.
 - ii. If the suspected violation is not cured within the prescribed period, the enforcing officer may issue a citation and commence proceedings in the magistrate court. Alternatively, the enforcing officer may commence proceedings in the magistrate court by filing a complaint.
 - iii. At the discretion of the enforcing officer, a written citation may be issued or complaint filed without first providing an opportunity to cure if it is determined that the violation has previously occurred at the property or an immediate threat to public health and safety exists.
 - iv. It shall be unlawful for a person to fail or refuse to provide evidence of his or her identity to the enforcing officer upon request when such officer has reasonable cause to believe the person has committed a violation of this ordinance. Sufficient evidence of identity shall consist of a picture identification containing the person's full legal name, address, and date of birth.

- c. Responsible Party. Citations may be issued to and complaints filed against any person who violates any provision of this ordinance as well as any person responsible for the property upon which a violation of this ordinance occurs, including:
 - i. Owners of the real property or their agents; or
 - ii. Occupants of the real property exercising actual control thereon.
- d. Separate Violations. Each day in which a violation of this ordinance continues shall constitute a separate violation of this ordinance.
- e. Penalty.
 - i. Upon the Magistrate Court finding a person responsible for a violation of this ordinance, the court shall impose a fine in an amount not less than twenty-five dollars (\$25.00) nor more than five hundred dollars (\$500.00) for each violation and order the immediate abatement of any ongoing violation.

9. Enforcement by the Governing Body

- a. In instances where a building or structure is ruined, damaged and dilapidated, or any premise is covered with ruins, rubbish, wreckage or debris, the Governing Body shall be entitled to enforce this ordinance by following the process prescribed by State statute at NMSA 1978, Section 3-18-5 as an alternative to the enforcement options available under Section 8, above.
- b. The reasonable costs incurred by the City in removing any building, structure, ruins, rubbish, wreckage or debris, pursuant to subsection 9(a), shall constitute a lien upon against the building, structure, ruin, rubbish, wreckage or debris so removed and against the lot or parcel of land from which it was removed.
 - i. Alternatively, the City may pay for the costs of removal of any condemned building, structure, wreckage, rubbish or debris by granting to the person removing such materials the legal title to all salvageable materials in lieu of all other compensation.
- c. Once the removal has taken place and the reasonable costs of removal incurred by the City can be calculated, the City Clerk shall prepare a "Notice of Lien" for filing in the office of the County Clerk, which shall contain the following information:
 - i. The number of the ordinance under which the lien is established;
 - ii. The fact that a lien is established;
 - iii. The general purpose of the lien;
 - iv. The name of the owner of the property against which the lien is established as determined from the records of the county assessor;
 - v. A description of the property against which the lien is established;
 - vi. The amount of the lien; and
 - vii. If the lien is for more than one period of time, the date for which the lien is established.
- d. Following the recording of the Notice of Lien, the Governing Body may declare the full amount due and payable and proceed with foreclosure proceedings on the


subject property in the manner provided in NMSA 1978, Sections 3-36-1 through 3-36-6.

- i. If the lien is paid off at any time prior to foreclosure, including any accrued interest, the City Clerk shall release the lien in the manner specified in NMSA 1978, Section 3-36-3.

10. Repealer

- a. This ordinance repeals and replaces Section 132.02 and Chapters 90, 95 and 135 of the City Code as well as any prior ordinances or resolutions to the extent that they conflict with this ordinance.
- b. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining provisions of this ordinance.

PASSED, APPROVED, AND ADOPTED by the Governing Body of the City of Elephant Butte, New Mexico, this 21st day of July, 2021.


Edna Trager
Mayor

ATTEST:


Rani Bush,
Clerk-Treasurer

